easier for its own litigants. *Premo Specialty Mfg. Co.* v. *Jersey-Creme Co.*, 200 Fed. 352 (9th Circ.); *Colorado Iron-Works* v. *Sierra Grande Mining Co.*, 15 Colo. 499, 25 Pac. 325; *Fond du Lac Cheese & Butter Co.* v. *Henningsen Produce Co.*, 141 Wis. 70, 123 N. W. 640.

FOREIGN EXCHANGE — SALE OF DRAFT — MEASURE OF DAMAGES ON DISHONOR. — The plaintiff paid the defendant $92,500 for a draft for 2,000,000 *lire* on the defendant's Genoese correspondent. Thereafter the Bank Commissioner took possession of the defendant's business and ordered the Genoese bank not to pay; these instructions were followed when the draft was later presented. The plaintiff sues to recover the original sum paid. *Held*, that the plaintiff recover only the rate of exchange for 2,000,000 *lire* at the date of dishonor. *American Express Co.* v. *Cosmopolitan Trust Co.*, 132 N. E. 26 (Mass.).

To recover the original deposit the plaintiff must prove either the right to rescind the contract for failure of consideration or the existence of a trust. There cannot be a trust without a *res*. Where actual money is transferred abroad, there is a *res*. *People ex rel. Zotti* v. *Flynn*, 135 App. Div. 276, 120 N. Y. Supp. 511. But, in the case of cable transfers and drafts, because of the lack of a *res*, the existence of any trust is generally denied. *Legniti* v. *Mechanics and Metals Bank*, 230 N. Y. 415, 130 N. E. 597. See *Strohmeyer and Arpe* v. *Guaranty Trust Co.*, 172 App. Div. 16, 157 N. Y. Supp. 955; Zechariah Chafee, Jr., "Progress of the Law — Bills and Notes," 33 HARV. L. REV. 255, 279; Austin W. Scott, "Progress of the Law — Trusts," 33 HARV. L. REV. 688, 689. Therefore the plaintiff advances the theory of rescission because of failure of consideration. See 3 WILLISTON, CONTRACTS, §§ 1375, 1457, 1467. Obviously had this been a simple executory contract by the defendant to furnish *lire* in Genoa, the plaintiff might have rescinded for the defendant's failure to perform. But there is more than a simple contract. The draft is the thing bought, the consideration. Merchants customarily regard the draft as a tangible thing; and, in effect, the transfer of the draft has merged the executory contract. If the draft is dishonored, the plaintiff must sue in damages for the breach of the obligation attached by law to the draft. See Byles, J., in *Suse* v. *Pompe*, 8 C. B. (N. S.), 538, 565.

HOMESTEAD — PROTECTION OF WIFE'S INTEREST — VALIDITY OF HUSBAND'S CONTRACT TO CONVEY HOMESTEAD. — A statute provides that a deed conveying homestead property shall be valid only if signed by both husband and wife. (C. & M. ARK. DIGEST, § 5542.) The defendant, without the assent of his wife, contracted to sell the plaintiff his homestead. On the wife's refusal to join in the conveyance, the plaintiff sues for damages. *Held*, that the plaintiff do not recover. *Ferrell* v. *Wood*, 232 S. W. 577 (Ark.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 78.

HOMICIDE — SELF-DEFENSE — DUTY TO RETREAT FROM PLACE OF BUSINESS. — The defendant, while about his business of superintending certain excavations, was attacked by the deceased and killed him. The court instructed the jury that if retreat is reasonably safe one must retreat rather than kill. *Held*, that these instructions were erroneous. *Brown* v. *United States*, U. S. Sup. Ct., Oct. Term, 1920, no. 103.

It is possible that this decision stands for the proposition that there is, in general, no duty to retreat, a proposition difficult to maintain. See Joseph H. Beale, "Retreat from a Murderous Assault," 16 HARV. L. REV. 567. More narrowly construed, the decision may be regarded as extending to include a place of business the doctrine that one need not retreat from his dwelling-

house to avoid the necessity of killing in self-defense. There have been prior decisions to the same effect. *Askew* v. *State*, 94 Ala. 4, 10 So. 657; *Bean* v. *State*, 25 Tex. Cr. App. 346, 8 S. W. 278. Even in its unextended form the doctrine merits scrutiny. It is a heritage from times of turbulence and strife when retreat from one's castle was necessarily attended with an increase of peril. See Seymour D. Thompson, "Homicide in Self-defense," 14 AM. L. REV. 548, 554. Its justification rested on that fact. *Semayne's Case*, 3 Coke, 185, 186; *State* v. *Patterson*, 45 Vt. 308. See 1 HALE P. C. 481; Joseph H. Beale, "Homicide in Self-defense," 3 COL. L. REV. 526, 541. That a retreat from one's house to-day increases peril is not axiomatic. It depends in each case upon the facts and a blanket rule is impossible. Accordingly, a blanket rule of law that looks for justification to an assumption that retreat from a dwelling is always attended with increased peril is unsound. Doubtless the complex of sentiment and inadequate analysis in which the rule that "an Englishman's house is his castle" is embedded will preserve it. But even that affords no justification for its extension.

INTERSTATE COMMERCE — TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — TAXATION OF BILLS RECEIVABLE DERIVED FROM INTERSTATE COMMERCE. — A Louisiana statute provides for the taxation of all property having a *situs* in the state, including credits and bills receivable. (1898 LA. ACTS, Act. 170, § 7). The plaintiff is a domestic corporation engaged in buying and selling lumber both within and without the state. An assessment was made upon it by subtracting from the total sum due the company for interstate and intrastate business, the total owed by the company in Louisiana and other states. The plaintiff appeals from judgment rejecting its demand to annul the assessment. *Held*, that the judgment be affirmed. *Krauss Bros. Lumber Co.* v. *Board of Assessors*, 88 So. 397 (La.).

The extent to which a state may indirectly burden interstate commerce and yet not regulate commerce in the constitutional sense, is a practical, not a technical question. See *Galveston, H. & S. A. Ry. Co.* v. *Texas*, 210 U. S. 217, 225. A state may tax property, within its boundaries, engaged in interstate commerce, on the basis of its value as a going concern. *W. U. Tel. Co.* v. *Massachusetts*, 125 U. S. 530. A tax on property in the original packages brought from without the state is valid. *Brown* v. *Houston*, 114 U. S. 622. Also, a tax on net income of a domestic corporation, partly derived from interstate commerce, is constitutional. *U. S. Glue Co.* v. *Town of Oak Creek*, 247 U. S. 321. Such taxes, practically, have very little deterrent effect on interstate commerce. On the other hand, to tax gross receipts derived from interstate commerce burdens each transaction in a manner that tends to prohibition. *Phila. & So. S. S. Co.* v. *Pennsylvania*, 122 U. S. 326; *Galveston, H. & S. A. Ry. Co.* v. *Texas*, *supra*. No such effect as that would follow the tax in the principal case. Like the net income tax, it bears no ratio to the interstate business done, and has no tendency, practically, to embarrass it. See *U. S. Glue Co.* v. *Town of Oak Creek*, *supra*, at 328. See Thomas R. Powell, "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 32 HARV. L. REV. 374, 415. The tax is a legitimate exercise of the state's power to exact indiscriminately a toll from all property within its jurisdiction.

JOINT TENANCY — SEVERANCE — EFFECT OF NON-ACCEPTANCE OF DEED BEFORE DEATH OF GRANTOR. — A joint tenant executed a deed of his moiety and delivered it to a third party, to be kept until the grantor's death and then given to the grantee. After the grantor's death, the deed was handed to the grantee, who till then had known nothing of it. The other joint tenant claims